

TOM B. BOSTON

IBLA 71-83

Decided June 29, 1972

Appeal from decision U 12266 et al. of land office, Salt Lake City, Utah, Bureau of Land Management, rejecting oil and gas offers.

Affirmed.

Oil and Gas Leases: Lands Subject to -- Regulations: Interpretation -- State Exchanges: Effect of Application

A regulation, 43 CFR 2013.2-4(1970), now substantially embodied in 43 CFR 2091.2-3 (1972), which provides that the filing of a valid application for state exchange segregates the selected lands from the filing of applications, the allowance of which is discretionary, is effective to preclude the acceptance of such applications.

APPEARANCES: Don E. Williams, Esq., of Kilgore and Kilgore, for the appellant.

OPINION BY MR. FISHMAN

Tom B. Boston has appealed from a decision of the land office, Bureau of Land Management, at Salt Lake City, Utah, dated October 6, 1970, rejecting oil and gas offers U-12266 and U-12271 in part, and U-12270 in toto, because "State Exchange Application U-3710 segregates these lands from all types of filings."

The applicable regulation, 43 CFR 2013.2-4 (1970), recited in part:

The filing of a valid application for exchange under the regulations of Subpart 2244 (state exchanges) will segregate the selected public lands to the extent that any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant.

The appellant does not dispute the prior filing of a valid state exchange application. However, he asserts that the regulation is discordant with the Taylor Grazing Act, § 6, 4 U.S.C. § 315e (1970), which in substance states that nothing in the Act shall restrict mining activities. Therefore, he reasons, that the state exchange application could not have the effect attributed to it by the regulation and the land office. He also suggests that the issuance of an oil and gas lease in the circumstances of the case is mandatory. He further asserts that since the State is reserving all minerals, the United States would in turn reserve all minerals and that the granting of his applications "would not in any way disrupt the exchange."

The answer to appellant's first contention is simply that the authority of the Secretary to promulgate the regulation is not based necessarily upon the Taylor Grazing Act, but rather upon 43 U.S.C. §§ 2 and 1201 (1970). Since the issuance of oil and gas leases is discretionary, Udall v. Tallman, 380 U.S. 1 (1965), it necessarily follows that the Secretary may adopt rules governing, or even precluding, such issuance. United States v. Wilbur, 283 U.S. 414 (1931).

The remaining argument urged by the appellant is that allowance of his applications would not disrupt the exchange. However that may be, the purpose of the regulation is to keep land, on which a valid state exchange application has been filed, free from the burden of other applications which would require adjudication. In certain circumstances, allowance of a state exchange application is mandatory, Solicitor's Opinions, 61 I.D. 270, 274; 277, 280 (1954). The regulation is an implementation of the duty of the Secretary " * * to proceed with such exchange at the earliest practicable date * * *." 43 U.S.C. 315 g (c) (1970). Even assuming, arguendo, that the allowance of appellant's applications would not disrupt the processing of the state exchange application, the segregative effect of the regulation precludes their favorable consideration. Cf. Robert M. Ford, 4 IBLA 321 (February 11, 1972). The validity of a regulation having a segregative effect was upheld in Buch v. Morton, 449 F.2d 600 (9th Cir. 1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081) the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Joseph W. Goss, Member

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